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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/684,557	10/14/2003	Charles S. Taylor	GUID-005CON6	5455
89729	7590	06/08/2010	EXAMINER	
Law Office of Alan W. Cannon 942 Mesa Oak Court Sunnyvale, CA 94086				SINGH, SUNIL K
ART UNIT		PAPER NUMBER		
3732				
MAIL DATE		DELIVERY MODE		
06/08/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/684,557	TAYLOR ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sunil K. Singh	3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 07 April 2010.  
 2a) This action is FINAL.                    2b) This action is non-final.  
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1,12,13,46,53,58,190-192 and 194-222 is/are pending in the application.  
 4a) Of the above claim(s) 203-218 is/are withdrawn from consideration.  
 5) Claim(s) \_\_\_\_\_ is/are allowed.  
 6) Claim(s) 1,12,13,46,53,58,190-192,194-199 and 219-222 is/are rejected.  
 7) Claim(s) 200 and 201 is/are objected to.  
 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.  
 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
     Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
     Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
 a) All    b) Some \* c) None of:  
 1. Certified copies of the priority documents have been received.  
 2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____.	6) <input type="checkbox"/> Other: _____ .

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/07/2010 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 190-192, 194-198, 202 219 and 220 are rejected under 35 U.S.C. 103 (a) as being unpatentable over Vierra et al. (US 5,749,892) in view of Boyd et al. (US. 5,799,661)

Vierra discloses a device that includes: a means for stabilizing the beating heart comprising a contact member (15,17) shapeable to engage the surface of the beating heart; wherein the contact member is hollow; wherein the contact member is capable of being inflated; a shaft member (3); wherein the contact member may comprise a flexible tube (21) that is capable of contacting a surface of the beating heart; wherein the

contact member is capable of being bent to form a U-shaped configuration; wherein the contact member is configured for application of a vacuum; wherein the flexible tube contains a plurality of particles; and wherein a malleable member extends along at least a portion of a length of the tube. However, Vierra fails to disclose a contact member comprising a single wire and wherein the contact member includes a malleable material capable of retaining its shape memory.

Boyd teaches a device having a contact member that comprises a single wire and wherein the wire is made of a malleable material capable of retaining its shape (titanium alloy) (column 19, lines 60-65). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Vierra to include a contact member comprising a single wire made of malleable material, as taught by Boyd, since such a device is well known in the art.

4. Claims 1,46,53, 58 and 221 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vierra in view of Boyd and further in view of Buckman, Jr. et al. (US 5,582,580).

Vierra/Boyd discloses the invention substantially as claimed except for a device that includes a means for introducing positive/negative fluid pressure to the contact member.

Buckman teaches a device that includes a means for introducing positive/negative fluid pressure to the contact member (82) and wherein the contact member (82) is malleable (Fig. 7) (column 9, line 28-column 10, line 63). It would have

been obvious to one having ordinary skill in the art at the time the invention was made to modify Vierra/Boyd to include a means for introducing pressure to the contact member, as taught by Buckman, in order to provide an alternate means of shaping the contact member that allows the contact member to have a plurality of different shapes. Furthermore, such means are well known in the art.

5. Claims 12,13 and 222 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vierra in view of Boyd et al. and Buckman, Jr. et al. and further in view of Heilman et al. (US 5,098,369).

Vierra/Boyd/Buckman discloses the invention substantially as claimed except for wherein the contact member contains a conformable material that is granular, a polymeric, or a gel.

Heilman teaches a device that includes a hollow contact member that contains conformable material that is a gel (col. 1, lines 15-21). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Vierra/Buckman to include a contact member containing a gel, as taught by Heilman, since such a device is well known in the art.

#### ***Allowable Subject Matter***

6. Claims 200 and 201 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Response to Arguments***

7. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.
8. Applicant's arguments filed 04/07/2010 have been fully considered but they are not persuasive. The applicant argues that Buckman does not disclose a contact member that fixes its position. The Examiner disagrees. The Examiner is merely using Buckman to teach adding positive and negative fluid pressure to inflate the material. Once the material is inflated, it is fixed and conforms to the shape of heart because the flexibility of the material allows it to conform to the shape of the heart. It is the Examiner's position that Buckman's device will remain fixed even when it is not pressed against heart. The only time the contact member will not be "fixed" is when the fluid is removed from the contact member. Therefore, it is the Examiner's position that Buckman meets the limitation as claimed.

***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 Form.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil K. Singh whose telephone number is (571) 272-3460. The examiner can normally be reached on Monday-Friday (Increased Flex Schedule).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cris L. Rodriguez can be reached on (571) 272-4964. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

06/05/2010

/Sunil K Singh/  
Examiner, Art Unit 3732

/Cris L. Rodriguez/  
Supervisory Patent Examiner, Art Unit 3732